IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

RCRev..No. 342 of 2007

RCA.5/2006 of II ADDL. DISTRICT COURT, KOZHIKODE
RCP.178/2003 of ADDL.M.C.-I, KOZHIKODE
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REVISION PETITIONER/APPELLANT/RESPONDENT:

M.AHAMMED SAHIB, S/O.MOIDEEN,
AGED 55 YEARS, KASABA AMSOM
DESOM, KOZHIKODE TALUK,
RESIDING AT CHINTHAVALAPPU FLAT.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT/RESPONDENT/PETITIONER:

KUNDANCHERY ASHIRA,
D/O.KUNHAVULLA, AGED 35,
VILLIYAPPALI AMSOM DESOM,
VADAKARA TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

R.C.R.No. 342 of 2007

ORDER

Balachandran, J.

The tenant is the revision petitioner. The respondent is the landlady, who owns the scheduled building along with her brother Ashik. The petitioner challenges in this revision the concurrent orders of eviction passed against him by the authorities below under Sections 11(2)(b), 11 (4)(i) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. The respondent filed R.C.P.No.178/03 before the Rent Control Court, Kozhikode under Sections 11 (2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(iii) of the Act against the petitioner for eviction. Eviction was allowed by the Rent Control Court under Sections 11(2)(b), 11(3), 11(4)(i) and 11(4)

(iii) of the Act, rejecting only the claim advanced under Section 11(4)(ii) of the Act. The petitioner/ tenant filed R.C.A.No.5/06 assailing the order of eviction so passed by the Rent Control Court. The appellate authority reversed the order of eviction passed by the Rent Control Court under Section 11 (3) of the Act, but confirmed the eviction ordered under Sections 11(2)(b), 11(4)(i) and 11(4)(iii) of the Act. Hence, this revision by the petitioner/ tenant.

3. Though eviction ordered under Section 11(2) (b) of the Act is also assailed in this revision, the monthly rate of rent is admitted to be Rs.500/- and there is no dispute that it is in arrears with effect from August 1999. Hence, the petitioner can resort to his remedies by moving for vacating the order under Section 11(2)(c) of the Act and the dispute regarding payment of any portion does not deserve to be considered in this revision.

4. The respondent alleged that a comfortable building has been acquired by the petitioner/tenant and he is not using the scheduled building for his residence and he has sub let the building to third parties without the knowledge and consent of the respondent/landlady or her brother Ashik. The petitioner/tenant resisted the grounds for eviction as aforesaid contending that the scheduled building was taken on lease not for his residential purpose alone, but it was being taken for himself, his brother Meeran Sahib and other family members and also for the purpose of using the same in connection with their family business; that he is at present using the scheduled building for accommodating the staff of his family business in textiles at Calicut and that he, being an aged person, has shifted his residence to a nearby flat for the purpose of his treatment and other related reasons.

5. Before the Rent Control Court the respondent gave evidence as PW1 and got marked Exhibits A1 to A7 and C1 and C1(a). On behalf of the petitioner/ tenant, he examined as his witness RW1 and got marked in evidence Exhibits B1 to B4. As regards the claim for eviction under Section 11(4)(i) of the Act, the Rent Controller found, on evidence, that it is admitted that the petitioner/tenant, at present, is not residing in the scheduled building and according to him, the said building is used as residence of his staff, though occasionally, his family members are also residing. Exhibit C1 report filed by the Commissioner also was to the effect that staff members of the petitioner/tenant are residing in the scheduled building and no other family member of the petitioner/tenant is residing therein. Possession and occupation of the scheduled building was, thus, found to be exclusively with persons other than the petitioner. As to under what arrangement others, found in occupation of the

building, are in occupation and what is the jural relationship between the petitioner/tenant and the occupants are matters to be proved by the tenant himself. But the petitioner/tenant did not enter the witness box to tender evidence or seek for issuance of commission to record his evidence. None of the persons in occupation of the scheduled building was also examined. It was in the circumstances that the Rent Control Court came to the conclusion that the respondent/landlady has proved her case of the petitioner/tenant having sub let the building to others without the knowledge and consent of either herself or her brother, who is the other co-owner.

6. As regards the petitioner/tenant coming into occupation of another building for his residence and having shifted his residence, the Rent Controller has relied on the admission made by the petitioner in his objection filed to the Rent Control Petition that he is now residing in a

nearby flat. According to his statement in the objection, his case is that due to several ailments he has shifted his residence for the purpose of treatment and other related reasons. However, he did not disclose as to what are the related reasons. The scheduled building was taken on rent by the petitioner/tenant for his residential occupation, for which purpose he has already acquired a flat and none of his relatives are shown to be in occupation of the scheduled building and he has failed also to establish the jural relationship between himself and persons, who were found in occupation of the scheduled building. In the circumstances, the Rent Control Court found that the petitioner has come into possession of a flat for his residential occupation and has sub let the scheduled building as alleged by the respondent/landlady. Those findings were upheld also in appeal by the appellate authority.

7. It is contended before us by the learned counsel for the petitioner that the petitioner has taken the building on rent not for his residential purpose alone, but also for the residence of the staff in his business in textiles and that therefore, shifting his residence to a nearby flat along with his family members does not render the occupation by the members of his staff, a case attracting Section 11(4)(i) of the Act. However, there is no dispute that the petitioner himself is the tenant. He has not tendered evidence in support of his contention that the building was taken on rent by him not for the sole purpose of his residential occupation, but also for the purpose of accommodating the staff in his business in textiles. RW1 examined on behalf of the petitioner is not one, who is having any direct knowledge as regards the transaction and he is not competent to swear to matters alleged as above in the objection filed by the petitioner/tenant. In any event, there

is only oath against oath and the authorities below were appreciating the evidence, evaluating its credibility, in the background and circumstances of the case. In view of the admitted fact that the petitioner has shifted his residence to a nearby flat and his case that he is occasionally residing in the scheduled building along with his staff has been disbelieved by the authorities below, Section 11(4)(iii) of the Act enables the respondent/ landlady to get an order of eviction as against the petitioner/tenant. Further, inasmuch as the petitioner has not established the jural relationship between himself and those found in residential occupation of the scheduled building, the authorities below were justified also in concluding that the petitioner has sub let the scheduled building without the knowledge and consent of the respondent/landlady or the other co-owner, especially when the persons found in occupation, as reported by the Commissioner in

Exhibit C1 report, were found in exclusive possession and occupation of the scheduled building. In the circumstances, there is absolutely no merit in the contentions advanced before us and no interference is called for with the concurrent orders passed by the authorities below, allowing eviction under Sections 11(4)(i) and 11(4)(iii) of the Act as well. This revision, in the circumstances, is devoid of merit.

In the result, we dismiss this Rent Control Revision.

It is contended before us by the learned counsel for the petitioner that at least six months' time may be granted to the petitioner/ tenant to vacate and surrender vacant possession of the scheduled building to the respondent/landlady. We would have considered the request favourably. But, this is a case, where the tenant has shifted his residence to a nearby flat purchased by him and even according to him, the persons in occupation

are his employees. In the circumstances, the petitioner is not entitled, in any event, to have so much time as prayed for to surrender vacant possession of the scheduled building, as he has already vacated the scheduled building. However, we grant the petitioner three months' time from today to surrender vacant possession of the scheduled building to the respondent/landlady on condition that the petitioner files an affidavit before the execution court within three weeks from today, unconditionally undertaking that he will surrender vacant possession of the scheduled building to the respondent/landlady within the said three months. He shall also deposit all rents in arrears before the execution court positively within three weeks from today and shall continue to pay to the respondent/landlady damages for use and occupation at the same rate at which the rent was being paid, till he actually surrenders vacant possession of the scheduled building to the

respondent/landlady. It is made clear that in the event of the entire arrears of rent being not deposited before the execution court within three weeks as aforesaid, the petitioner shall not be entitled to have the benefit of having three months' time to surrender vacant possession of the scheduled building to the respondent/landlady and he shall be liable to be evicted forthwith on the expiry of the said period of three weeks.

(K.Balakrishnan Nair, Judge)

23rd November, 2007

(K.P.Balachandran, Judge)

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